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Dated: October 12, 2006

Signature: B. Polito

(Bruno Polito)

AF/3622
IPW
SONY 3.0-030
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Paul H. Feinberg

Group Art Unit: 3622

Application No.: 09/785,095

Examiner: Raquel Alvarez

Filed: February 16, 2001

For: SYSTEM AND METHOD FOR PROVIDING
CUSTOMIZED ADVERTISEMENTS OVER A
NETWORK

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT
APPEAL BRIEF PURSUANT TO 37 CFR § 41.37**

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Notification of Non-Compliant Appeal Brief mailed October 3, 2006, concerning the Amended Appeal Brief filed June 19, 2006. The Brief filed June 19, 2006, has been amended as follows:

The section entitled Summary of Claimed Subject Matter has been revised so as to map independent claims 11, 14, 22, 32, and 41 to the specification and drawings in accordance with 37 C.F.R. § 41.37(c)(1)(v).

A Second Amended Appeal Brief is being submitted herewith for consideration.

No fee is believed due in this matter. However, in the event that any fee is due in connection with the foregoing, the Commissioner is hereby authorized to charge the same to our Deposit Account No. 12-1095.

Dated: October 12, 2006

Respectfully submitted,

By



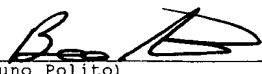
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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For: SYSTEM AND METHOD FOR PROVIDING
CUSTOMIZED ADVERTISEMENTS OVER A
NETWORK

SECOND AMENDED APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an amended version of the Amended Appeal Brief filed on June 19, 2006, which is being submitted in response to the Notice of Non-Compliant Appeal Brief mailed October 3, 2006. The section entitled Summary of Claimed Subject Matter has been revised so as to map independent claims 11, 14, 22, 32, and 41 to the specification and drawings in accordance with 37 C.F.R. § 41.37(c)(1)(v).

This is an appeal from the final rejection of claims 1-48 mailed October 11, 2005. The Commissioner was previously authorized to charge the \$500.00 required by 37 C.F.R. § 41.20(b)(2) for filing the brief, and any other fees that may be due and owing in connection with the brief, to Deposit Account No. 12-1095.

REAL PARTIES IN INTEREST

The real parties in interest in this case are the assignees of record: Sony Corporation, a Japanese corporation, having a place of business at 7-35 Kitashinagawa 6-Chome, Shinagawa-ku, Tokyo, Japan; and Sony Electronics Inc., a New Jersey corporation, having a place of business at 1 Sony Drive, Park Ridge, New Jersey 07656. The assignment of the present application to Sony Corporation and Sony Electronics Inc. was recorded in the United States Patent and Trademark Office on May 16, 2001, at Reel 011823, Frame 0914.

RELATED APPEALS AND INTERFERENCES

At present, there are no other appeals or interferences known to Appellant, Appellant's legal representative, or the assignees, which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-48 are pending in the present application. Claims 1-48 were rejected in a final office action and such final rejection of claims 1-48 is being appealed.

STATUS OF AMENDMENTS

A final office action rejecting claims 1-48 was mailed on October 11, 2005. A response to the Final Action was filed on December 7, 2005. The response did not cancel or amend any of the claims that are the subject of this appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

Appellant's invention as recited in the independent claims (claims 1, 11, 22, 32, and 41) is directed to a method of providing information to a device, and a system for presenting information to a user. Each of the claims recites that the user/user-device receives a messages indicating a change in proximity of the user/user-device relative to an entity. Before discussing the Examiner's final rejection and the references applied therein, Appellant provides the following summary of the subject matter defined in each independent claim.

Independent claim 1 is directed to a method of providing information to a device. The method involves receiving a request for information from the device and receiving location information indicative of the geographical position of the device. The request and location information are processed so as to select (1) audio-visual content based on the request, without regard to the location information; and (2) geographically-oriented information based on the location information. A response is then sent to the device. The response includes the geographically-oriented information which, in turn, includes a first message of a vendor and a subsequent message of the vendor indicating a change in proximity of the device. Notably, the message indicating a change in proximity of the device is sent to the user device.

In an illustrative embodiment of claim 1, the request for information is generated by an end user personal computer (Fig. 1, element 60) and is received at a web server (Fig. 1, element 80). The end user computer includes a GPS receiver which monitors the location of the computer/user and

writes location information into a "cookie" which is accessible by the web server (see, e.g., ¶ 0014). Upon receipt of the request for information, the web server queries the cookie contained in the computer and extracts the location information (see, e.g., ¶ 0021). Based on the location information, the server determines the geographically-oriented information that should be sent to the computer (see, e.g., ¶ 0022). The server then sends the geographically-oriented information to the computer along with information that is not necessarily particular to the computer's/user's location (see, e.g., ¶ 0023).

By way of illustration, it is noted that the geographically-oriented information may concern a vendor having an establishment in the vicinity of the user's location. In an example provided in the specification, the geographically-oriented information is the name of a restaurant located in the user's vicinity (see, e.g., ¶ 0022). Thus, "a first message of a vendor" may be the name of restaurant in the user's vicinity. Further, the specification describes an example in which a subsequent message from a vendor is provided as the user gets closer to the vendor's establishment. In the example, the subsequent message is "Your getting closer!" (see, ¶ 0029). Thus, "a subsequent message of the vendor indicating a change in proximity of the device" may be the message "Your getting closer!" Notably, the subsequent message is sent to the user device, and is an indication to the user of the user's proximity to the vendor.

Independent claim 11 is directed to a method of providing information to a device (e.g., computer 60 of Fig. 1). In claim 11, the step of selecting geographically-oriented information "comprises selecting said geographically

oriented information from a collection of said geographically-oriented information." (See, e.g., ¶¶ 0018-0022; and Fig. 2) The claim further specifies that the collection of geographically-oriented information includes first and second messages of a vendor (e.g., vendor 115 of Fig. 1), and that the step of selecting the geographically-oriented information includes "delivering the first message to indicate a change in proximity of the device relative to the vendor." (See, e.g., ¶ 0029). Accordingly, the first message of claim 11 is a message sent to the user device, and is an indication to the user of the user's proximity to the vendor. An example of such a message is the message "Your getting closer!".

Independent claim 22 is directed to a method of providing information to a device (e.g., computer 60 of Fig. 1). The claim specifies that the geographically-oriented information is associated with an entity (e.g., vendor 115 of Fig. 1) and that the entity is "notified that said geographically-oriented information has been sent to [a client device]." The claim further specifies that "the geographically-oriented information communicates a change in proximity between the device and the entity." (See, e.g., ¶ 0029). Since the geographically-oriented information is sent to the user device as part of the response to the user, it follows that the claim calls for sending an indication to the user device of a change in proximity between the user and the entity, and that the change in proximity is communicated to the user.

Independent claim 32 is directed to a portable system for presenting information to a user (e.g., a user of computer 60 of Fig. 1). The system includes a processor, a positioning system, an input means for receiving information

from a user, a display and a modem. (See, e.g., ¶¶ 0012-0014). The system is operable to receive a request for information from a user via the input means, retrieve the geographic location of the positioning system from the positioning system, and send the request and geographic location to a server (e.g., server 80 of Fig. 1) via the modem. The system is further operable to receive from the server requested information and location information, and to display the requested information and location information "with a plurality of messages of a vendor to indicate a change in location of the portable device with respect to the vendor." (See, e.g., ¶¶ 0023-0029). Accordingly, a change in proximity between the user and the vendor is communicated to the user.

Independent claim 41 is directed to a system for presenting information to a user (e.g., a user of computer 60 of Fig. 1). The system comprises a remote device (e.g., computer 60 of Fig. 1) and a server (e.g., web server 80 of Fig. 1). The remote device includes a positioning system and a modem. (See, e.g., ¶¶ 0012-0014). The server has "neutral content" and "dependent content," the dependent content including geographically-oriented information. (See, e.g., ¶ 0018). When the remote device requests the neutral content via the modem and sends its geographical location to the server, the server sends the neutral content and the dependant content to the remote device. (See, e.g., ¶¶ 0020-0023). The dependent content includes "at least first and second messages concerning a vendor [e.g., vendor 115 of Fig. 1] to indicate a change in proximity of the remote device with respect to the vendor." (See, e.g., ¶ 0029). Accordingly, a change in proximity between the user and the vendor is communicated to the user.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether or not claims 1-48 are unpatentable under 35 U.S.C. § 103(a) as being obvious in view of *Skillen* (WO 98/36366) and *Hall* (US 6,026,375).

ARGUMENT

Appellant respectfully submits that the independent claims (claims 1, 11, 22, 32, and 41) are patentable over *Skillen* and *Hall*.

Appellant's invention as recited in the independent claims is directed to a method of providing information to a device, and a system for presenting information to a user. Each of the claims recites that the user/user-device receives a message indicating a change in proximity of the user/user-device relative to an entity.

Neither *Skillen* nor *Hall* discloses that a message indicating a change in proximity of a user relative to an entity is received by the user.

In the final rejection, the Examiner implicitly acknowledges that *Skillen* fails to disclose such limitation by failing to assert that *Skillen* discloses the limitation and asserting instead that *Hall* discloses the limitation. In particular, the Examiner asserts that *Hall* discloses "a first message of a vendor and a subsequent message of the vendor indicating a change in proximity of the user." In making the assertion, the Examiner states that:

Hall teaches the user receiving a first message about a local facility that can complete the order (col.9 11.19-32) and a subsequent message pertaining the current

proximity of the local facility, based on the updated time of arrival taking into account the user's current location in addition to the current user's speed and traveled routes (col.10 ll.6-12).

(Final Action at 3, ll.3-12).

However, close inspection of *Hall* reveals that *Hall* does not disclose that a message indicating a change in proximity of the user relative to the local facility is received by the user.

Hall discloses a method and system that enables service providers to receive an order from a mobile customer, receive customer location information, and schedule the completion of the customer's order to coincide with the customer's arrival at a local facility. The components of *Hall's* system include: a mobile customer premises equipment, or "MCPE" (Fig. 1, element 105), a mobile location determination system, or "MLDS" (Fig. 1, element 145), a service provider's system, or "SPS" (Fig. 1, element 150), and one or more local facilities that receive orders from the SPS (Fig. 1, elements 172, 174, and 176). The MCPE includes a personal agent system, or "PAS" (Fig. 2, element 210) which, in turn, includes a personal assistant agent, or "PAA" (Fig. 2, element 220). The SPS includes a service provider agent system, or "SPAS" (Fig. 3, element 365) which, in turn, includes a customer service agent, or "CSA" (Fig. 3, element 355) and a systems agent, or "SA" (Fig. 3, element 360).

In operation, a user/customer of the *Hall* system initiates an order by using the MCPE to contact the SPS (*Hall* col.8 ll.45-62). Upon initiation of an order, the SA of the

SPS determines a local facility best able to handle the customer's order (see, e.g., *Hall* col.9 ll.19-50).

In a preferred embodiment, the SA calculates the estimated time of arrival of the customer to the local facility (see, e.g., *Hall* col.9 ll.24-26). Further, "the customer may opt to maintain a connection with the SPAS [of the SPS], in which case the PAA [of the MCPE] may continue to transmit customer location information to the SPAS [of the SPA]", and "[t]his customer location information may be used to update periodically the customer's ETA." Thus, in *Hall* the mobile device is used to provide updated location information to the service provider (the SPAS of the SPS) and the service provider uses the information to update the customer's ETA. Therefore, no indication is provided to the customer of a change in proximity between the customer and the local facility. Rather, an indication is provided to the service provider of a change in proximity between the customer and local facility.

Moreover, referring to *Hall*'s column 8, line 45 to column 10, line 13, it can be seen that the location of *Hall*'s local facility is sent to the customer only once. More particularly, *Hall* discloses that the customer service agent (CSA) of the service provider's system (SPS) notifies the customer of the local facility's location and order-cost (*Hall* col.9 ll.51-54). No indication of a change in proximity between the local facility and the customer is ever sent to the customer.

Regarding the Examiner's assertion that *Hall*'s column 10, lines 6-12 discloses a user receiving "a subsequent message pertaining the current proximity of the local facility

based on the updated time of arrival," Appellant notes that the cited section includes no such disclosure. Indeed, rather than disclosing transmission to the user ("customer") of a message pertaining to the current proximity of the local facility, the section discloses transmission from the user of a message pertaining to the user's location.

Since neither *Skillen* nor *Hall* discloses a user device receiving a message indicating a change in proximity of the user relative to an entity, Appellant believes that claims 1, 11, 22, 32, and 41 are patentable over *Skillen* and *Hall* on at least this basis.

Dependent claims 2-10, 12-21, 23-31, 33-40, and 42-48 depend respectively on independent claims 1, 11, 22, 32, and 41. Since dependent claims inherit the limitations of their respective base claims, Appellant believes that claims 2-10, 12-21, 23-31, 33-40, and 42-48 are patentable over the cited references for at least the same reasons discussed in connection with claims 1, 11, 22, 31, and 41.

CONCLUSION

Claims 1-48 are not obvious in view of the applied combination of *Skillen* and *Hall*. Accordingly, it is respectfully submitted that the Examiner erred in rejecting claims 1-48 and a reversal of such rejections by this Honorable Board is solicited.

Dated: October 12, 2006

Respectfully submitted,

By 

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APPENDIX A - CLAIMS

1. A method of providing information to a device, said method comprising:

receiving a request for information from said device;

receiving location information indicative of the geographical position of said device;

processing the requested information and location information with at least one processor so as: (1) to select audio-visual content based on said request and regardless of said location information, and (2) to select geographically-oriented information, based on said location information; and

sending response information to said client device in response to said request, said response information comprising both said geographically-oriented information and said content,

wherein the geographically-oriented information includes (a) a first message of a vendor and (b) a subsequent message of the vendor indicating a change in proximity of the device.

2. The method of claim 1 wherein said location information is provided by said at least one processor.

3. The method of claim 2 wherein said request for information is the address of a web page and said response information is a web page.

4. The method of claim 3 wherein said geographically-oriented information is placed within said web page.

5. The method of claim 4 wherein said web page comprises an on-line magazine.

6. The method of claim 1 wherein said steps of sending and receiving comprise sending and receiving via a wireless connection.

7. The method of claim 3 wherein said geographically-oriented information relates to an advertisement.

8. The method of claim 1 wherein said advertisement information comprises a hyperlink to another web page.

9. The method of claim 1 wherein said location information comprises latitude and longitude.

10. The method of claim 1 wherein said location information is provided by a GPS receiver connected to said processor.

11. A method of providing information to a device, said method comprising:

receiving a request for information from said device;

receiving location information indicative of the geographical position of said device;

processing the requested information and location information with at least one processor so as: (1) to select audio-visual content based on said request and regardless of said location information, and (2) to select geographically-oriented information, based on said location information; and

sending response information to said client device in response to said request, said response information comprising both said geographically-oriented information and said content, wherein said step of selecting geographically-oriented information comprises selecting said geographically-oriented information from a collection of said geographically-oriented information,

wherein the collection of said geographically-oriented information includes a second message of a vendor and

a first message of the vendor, and wherein the step of selecting the geographically-oriented information includes delivering the first message to indicate a change in proximity of the device relative to the vendor.

12. The method of claim 11 wherein at least two items in the collection are associated with the same geographic location.

13. The method of claim 2 wherein said geographically-oriented information is selected based on the time of day of the request.

14. The method of claim 2 wherein said geographically-oriented information is selected based on demographic information relating to the processor or the user of said processor.

15. The method of claim 14 wherein said demographic information was received before said request was received.

16. The method of claim 1 further comprising receiving a request for information from a second processor different from the other said processor; receiving location information indicative of the geographical position of said second processor; selecting audio-visual content based on said request and regardless of said location information, said request from said second processor being identical to the request from said other processor; selecting geographically-oriented information for said second client that is different from the geographically-oriented information for said other processor.

17. The method of claim 2 further comprising transmitting default information in place of said geographically-oriented information if said location information is not received.

18. The method of claim 1 wherein said geographically-oriented information is chosen from a plurality of information associated with said geographical position.

19. The method of claim 18 wherein said plurality of information associated with said geographical position comprises a plurality of advertisements associated with a plurality of different entities near said geographical position.

20. The method of claim 1 wherein said geographically-oriented information comprises an advertisement for a vendor and said advertisement changes based on the distance between said geographical position and said vendor's establishment.

21. The method of claim 1 wherein said audio-visual content and said geographically-oriented information are stored on different servers.

22. A method of providing information to a device, said method comprising:

receiving a request for information from said device;

receiving location information indicative of the geographical position of said device;

processing the requested information and location information with at least one processor so as: (1) to select audio-visual content based on said request and regardless of said location information, and (2) to select geographically-oriented information, based on said location information; and

sending response information to said client device in response to said request, said response information comprising both said geographically-oriented information and said content, wherein said geographically-oriented information is associated with an entity, and further comprising the step of said entity being notified that said

geographically-oriented information has been sent to said client, and

wherein the geographically-oriented information communicates a change in proximity between the device and the entity with a plurality of messages concerning the entity.

23. The method of claim 22 wherein said entity sends a communication to said processor after said step of said entity being notified.

24. The method of claim 23 further comprising the step of said entity and said processor chatting with one another.

25. The method of claim 22 further comprising the step of the entity associated with said geographically-oriented information sending an electronic coupon to said processor.

26. The method of claim 1 wherein said geographically-oriented information includes information relating to the inventory of an entity.

27. The method of claim 1 wherein said location information comprises latitude and longitude.

28. The method of claim 1 wherein said location information comprises a zip code.

29. The method of claim 1 wherein said location information comprises a cell base station identifier.

30. The method of claim 1 wherein said location information comprises an area code.

31. The method of claim 1 wherein said location information the identity of local radio station.

32. A portable system for presenting information to a user comprising:

- a processor;
- a positioning system;
- input means for receiving information from a user;
- a display;

a modem;

instructions executable by said processor, said instructions comprising receiving a request for information from a user via said input means; retrieving the geographic location of said positioning system from said positioning system; sending said request and said geographic location to a server via said modem; receiving from said server requested information and location information, said requested information being responsive to said request and said location information being responsive to said geographic location; and displaying said requested information and said location information with a plurality of messages of a vendor to indicate a change in location of the portable device with respect to the vendor.

33. The system of claim 32 wherein said portable system is a personal digital assistant (PDA) and said modem is a wireless modem.

34. The system of claim 33 wherein said wireless modem communicates with a cellular base station.

35. The system of claim 33 wherein said display and said input means comprises a touch-sensitive display.

36. The system of claim 32 wherein said portable system comprises an Internet-capable wireless phone.

37. The system of claim 32 wherein said positioning system comprises a GPS receiver.

38. The system of claim 32 wherein said positioning system determines location based on a signal from a cellular base station.

39. The system of claim 32 wherein said positioning system determines location by triangulating signals from cellular base stations.

40. The system of claim 39 wherein said positioning system determines location based a unique sector identifier transmitted by a cellular base station.

41. A system for presenting information to a user comprising:

a remote device comprising a positioning system and a modem;

a server comprising neutral content and dependant content, said dependant content comprising geographically-oriented content;

wherein when said remote device requests said neutral content via said modem and sends its geographical location as determined by said positioning system, said server sends said neutral content and said dependant content, said dependant content at least including first and second messages concerning a vendor to indicate a change in proximity of the remote device with respect to the vendor.

42. The system of claim 41 wherein said server is a web server and communicates with said remote device via the Internet.

43. The system of claim 41 wherein said neutral content and dependant content is sent in HTML format.

44. The system of claim 41 wherein said neutral content and dependant content is sent in XML format.

45. The system of claim 41 wherein said server is associated with a URL.

46. The system of claim 45 wherein said remote device requests said neutral content by requesting said content form said URL.

47. The system of claim 46 wherein said neutral content comprises a web page containing audio or visual data.

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48. The system of claim 47 wherein said web page comprises an on-line magazine.

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APPENDIX B - EVIDENCE.

None.

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APPENDIX C - RELATED PROCEEDINGS

None.